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Decision

Matter of: DynCorp International LLC

File: B-289863; B-289863.2

Date: May 13, 2002

Carl J. Peckinpugh, Esq., and Charles S. McNeish, Esq., DynCorp, for the protester. C. Stanley Dees, Esq., Alison L. Doyle, Esq., and David M. Glynn, Esq., McKenna & Cuneo, and Peter H. Johnson, Esq., ITT Defense, for ITT Federal Services International Corporation, an intervenor.

Richard C. Bennett, Esq., U.S. Army Corps of Engineers, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest is sustained where source selection authority discounted weaknesses in awardee's proposal identified by technical and cost evaluators, and record does not establish that her disagreement had a rational basis.
 2. Protest that agency improperly assigned high performance risk rating to protester's proposal based on potential cost growth, while not assigning a similar rating to awardee's proposal, is sustained where agency had concern about cost growth as to both proposals.
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DECISION

DynCorp International LLC protests the award of a contract to ITT Federal Services International Corporation under request for proposals (RFP) No. DACA78-01-R-0016, issued by the U.S. Army Corps of Engineers to obtain base operation services at Camp As Sayliyah, in Qatar. DynCorp maintains that the agency misevaluated cost and technical proposals in making its award decision.

We sustain the protest.

The RFP sought proposals to provide an array of support services on a cost reimbursable basis for a base year, with four 1-year options. Offerors were advised that the agency would make award to the firm submitting the proposal deemed to offer the best overall value to the government, in light of price and non-price considerations. The RFP included four non-price elements (equal in importance):

management capability, technical capability, experience and past performance. (Each of the elements included subelements that are not relevant here.) The RFP advised that adjectival ratings of outstanding, excellent, satisfactory, marginal, unsatisfactory or unacceptable would be assigned for each subelement and element, and that an overall adjectival rating would be assigned to each proposal. As for cost, the RFP provided that proposals would be evaluated to determine cost reasonableness, cost realism, and completeness of the proposed costs (that is, that every required element of cost has been addressed in the proposal). With respect to the completeness element, the RFP included a cost breakdown sheet that specified cost elements for each of the various contract line items (for example, direct labor, indirect rates, materials, equipment and supplies). Offerors were advised that they were not required to use the cost breakdown sheet included with the RFP, but were nonetheless required to provide the information called for. Finally, the RFP provided that the agency would assign a risk rating to each proposal based on technical and cost considerations.

In response to the solicitation, the agency received five proposals, including those submitted by DynCorp and ITT. DynCorp's proposal received excellent ratings from the technical evaluation team (TET) under all four evaluation factors. Initial Documents (ID), exh. 2A at 5-8.¹ The TET identified a total of 18 strengths in the DynCorp offer; it found no weaknesses or risks. ID, exh. 2A, DynCorp Consensus Evaluation Worksheet, at 1-2.

ITT's proposal received satisfactory ratings in the management capability and technical capability areas, an excellent rating in the experience area, and an outstanding rating in the past performance area. ID, exh. 2A, at 11-13. The TET identified a total of eight strengths, six weaknesses and one risk consideration. ID, exh. 2A, ITT Consensus Evaluation Worksheet, at 1-2. The evaluators were concerned primarily with ITT's proposed staffing levels, which they described as "minimally satisfactory." Id. The TET further noted that ITT did not seem to understand the number of people required to meet the contract's requirements, and apparently misunderstood the overall scope of work; that, while the firm's proposed staffing approach might work, it would result in lower levels of response and services; and that there was a particular concern with the adequacy of the staffing in the security area of the requirement. Id. As for the risk consideration, the TET

¹ The agency has made three submissions in connection with the protest, an initial package of documents, an agency report that included some additional documents, and a supplemental agency report that included still more documents. In this decision, we use the phrase "initial documents" (ID) to refer to exhibits furnished with the agency's initial package of documents; "first agency report" (First AR) to refer to documents included with the agency's initial report; and "supplemental agency report" (SAR) to refer to documents provided with the agency's second report.

noted that ITT intended to expand its workforce after contract award, and that there was a risk that this might not be possible without compromising the firm's ability to perform quality work in a timely manner within the compressed timeframe available for startup of the contract. Id. at 2.

In the cost reasonableness and completeness areas, the cost evaluation team (CET) found the DynCorp proposal complete from an informational standpoint. Id., exh. 2B, at 8. The CET found the DynCorp proposal low as to cost overall, and specifically identified the costs associated with several functional areas as low, chiefly because the labor rates for some third country nationals (TCN) were considered low.² Id. at 8-10. The CET also concluded that some of the labor rates for United States nationals were low, and that DynCorp had proposed inadequate staffing in several functional areas. Id., exh. 2B, at 9-10.

As for ITT, the CET found that its cost proposal was incomplete from an informational standpoint because it did not include the RFP's cost breakdown sheets,³ and instead presented cost information in such a way that the CET could not adequately evaluate whether the proposal included costs for each element of the requirement. Id., exh. 2B, at 10. Additionally, the CET, like the TET, found that ITT's proposed staffing was inadequate to perform the requirement in 5 of the 10 functional areas, and that the staffing in 2 other functional areas indicated a misunderstanding of the scope of work. Id. at 11. In the three remaining functional areas, the CET either could not determine the adequacy of ITT's proposed rates or staffing, or could not evaluate the rates because necessary information was omitted from (or could not be identified in) the firm's proposal. Id.

For cost realism purposes, the CET adjusted both firms' proposals upward to account for shortfalls in staffing. In this connection, the record shows that the CET independently established composite labor rates for the various skill categories required to perform the contract, and also developed minimum staffing levels that the agency thought were necessary to perform the requirement. First AR, exh. 5; SAR, exh. 7. Where a firm proposed fewer than a minimum acceptable number of staff (in the agency's view), the CET added staff to the offer to bring it up to the minimum, and derived the cost to be added by multiplying the composite hourly

² TCNs are workers from countries other than Qatar or the United States that are hired by the contractor to perform work.

³ The cost breakdown sheet included with the RFP is a 25-page matrix that cross-references each functional area and sub-requirement (for example, the camp medical services functional area is further divided between ambulance and all equipment; and all tasks, services and supplies) with labor hours, direct labor costs, direct equipment costs, material costs, subcontractor costs, overhead and indirect costs and fee for each year of contract performance. RFP at exh. 1.

rates by the number of additional hours. As a result of these adjustments, the CET added [deleted] staff positions to the DynCorp proposal and adjusted its cost upward by [deleted], to a total evaluated cost of [deleted]. ID, exh. 2B, at 18; SAR, exh. 7, at 1. For ITT, the CET added [deleted] staff positions and adjusted its cost upward by [deleted], to a total evaluated cost of [deleted]. ID, exh. 2B, at 18; SAR, exh. 7, at 2. The CET made no adjustments to the proposals to account for labor rates deemed too low; according to the agency it did not make this adjustment because of time limitations.

The cost and technical evaluation results were provided to the source selection authority (SSA), who reviewed the materials and the proposals. The SSA took exception to certain of the evaluators' conclusions in making her source selection decision. She concluded, for example, that the DynCorp proposal should have been assigned weaknesses in the area of subcontracting, and also assigned the proposal a performance risk based on her conclusion that its low labor rates could result in cost growth over the course of the contract. ID, exh. 7, at 3-4. As for ITT, the SSA discounted several of the weaknesses identified by the TET, primarily those relating to ITT's proposed staffing, and also concluded that the performance risk identified by the TET (relating to the need for ITT to expand its workforce shortly after contract award) was not a legitimate concern. *Id.* at 5. The SSA also specifically discounted the CET's concern relating to the completeness of ITT's cost proposal, finding instead that all necessary information was included in the proposal, simply not in the form specified in the RFP's cost breakdown sheets. *Id.* On the basis of these considerations, the SSA made award to ITT without discussions, finding that the firm's proposal represented the best overall value to the government, notwithstanding its higher cost.

THE SSA'S DISAGREEMENT WITH THE EVALUATORS' CONCLUSIONS

DynCorp contends that the agency's source selection decision was unreasonable. DynCorp chiefly maintains that the TET's and CET's evaluations of the proposals accurately reflected the relative strengths and weaknesses of the offers, and that the SSA's disagreement with the evaluators' conclusions was unreasonable.

In reviewing source selection decisions, we examine the supporting record to determine whether the decision was reasonable, consistent with the evaluation scheme and adequately documented. *AIU North America, Inc.*, B-283743.2, Feb. 16, 2000, 2000 CPD ¶ 39 at 7-8. Although source selection officials may reasonably disagree with the ratings and recommendations of evaluators, they are nonetheless bound by the fundamental requirement that their independent judgments be reasonable, consistent with the stated evaluation scheme and adequately documented. *Id.* For the reasons discussed below, we find the SSA's conclusions here unreasonable.

The ITT Proposal

As noted, both the TET and the CET had reservations relating to the adequacy of ITT's proposed staffing; the TET described it as minimally satisfactory, while the CET raised specific concerns about the adequacy of ITT's proposed staffing in each of the 10 functional areas of contract performance, either because the data available in ITT's proposal showed that the staffing was inadequate, or because the data were inadequate to evaluate the staffing. In making her source selection decision, however, the SSA disagreed with the evaluators' conclusions, stating as follows:

Some of the weaknesses noted by the technical team was the offeror did not have a very good understanding of the overall scope of work. The offeror appears to have understaffed for the security responsibilities. Another weakness noted was the offeror does not fully understand the full extent of what is asked in the statement of work. After carefully reviewing this offeror's technical proposal, I disagree with all of the weaknesses. The weaknesses noted by the technical team are in direct conflict with the strengths noted by the same individuals. The strengths noted above [the SSA's decision document enumerated 5 strengths found by the TET] best describe this firm's technical proposal. The plan to use [deleted] on the base strengthens their proposal even more, since this project is a carry on of what is currently on going during normal time frames at this base. The performance risk noted on the technical proposal was the offeror intends to expand its workforce as soon as the contract is awarded. I do not feel this is a performance risk. This offeror currently has the base support contract at this base for everything except security and dining facility requirements. They have first hand knowledge of what work is required and the staffing required to perform in a satisfactory manner. This eliminates any performance risk for this offeror.

ID, exh. 7, at 5.

As an initial matter, we point out that, while the TET's conclusions were based to a great extent on a finding of inadequate staffing, none of the strengths noted by the SSA to explain her departure from the evaluators' conclusions relates to the adequacy of ITT's staffing. Given the importance of ITT's inadequate staffing to the TET's conclusions, it is not apparent how the SSA could have questioned the weaknesses identified by the TET without considering its staffing concerns. There is nothing else in the record that provides a basis for questioning the weaknesses identified by the TET (and the CET) relating to the adequacy of ITT's proposed staffing. In this connection, the CET, in performing its cost realism evaluation, added [deleted] full time equivalents (FTEs) to the ITT proposal, thereby increasing the firm's proposed staffing—[deleted] full time equivalents (FTE)—by more than

[deleted]. SAR, exh. 7, at 2. The SSA does not explain why she did not consider such a large underestimation of required staffing to be a significant weakness.

It also is not clear how—as the SSA found—ITT’s use of [deleted] alleviated the staffing shortfall weakness noted by the evaluators. First, the record shows that, overall, subcontract personnel comprised only [deleted] (or [deleted] percent) of the agency’s projected [deleted] FTEs required to perform the contract. ITT Proposal at 1-5. Moreover, the evaluators actually found it necessary to add [deleted] FTEs for cost realism purposes to those areas where ITT proposed to use subcontractors; this indicates that, rather than alleviating ITT’s staffing deficiency, the proposed subcontractors exacerbated it. (The record also shows that [deleted]—ITT is the incumbent contractor for many of the installations functional areas, excluding food service and security). ITT Proposal at 1-2, 1-3.

We also find no reasonable basis for the SSA’s discounting of the performance risk identified by the evaluators. As noted, the evaluators assigned a proposal risk to the ITT offer because it showed that the firm intended to expand its workforce after contract award, and there was a concern that this might not be possible within the time available for contract start-up. ID, exh. 2A, ITT Consensus Evaluation Worksheet, at 2. The SSA discounted this risk, finding that ITT, the incumbent contractor for all of the functional areas except security and full food service, had first-hand knowledge of the work involved and the staffing required. The SSA’s position is untenable. First, her finding does not directly address the evaluators’ concern—that the expansion of ITT’s workforce might not be possible in the start-up time allowed. This concern would seem to go beyond the question of ITT’s knowledge of the work and staffing requirements themselves, the only factor cited by the SSA. In any case, the record shows that the security functional area alone comprises approximately [deleted] percent of the overall staffing requirement for ITT (as calculated by the agency),⁴ [deleted] is the incumbent for this functional area (rather, DynCorp is the incumbent). We conclude that the SSA has provided no rational basis for discounting the risk found by the technical evaluators in arriving at her conclusions.

Finally, we find that the SSA unreasonably discounted the CET’s finding that the ITT proposal was incomplete. As noted, the evaluators found that, because of the manner in which ITT presented its cost information (it did not include the cost

⁴ For the security functional area, the record shows that ITT intended to assign [deleted] of its employees, [deleted]. ITT Proposal at 1-5. The agency added [deleted] FTEs to ITT’s proposal in the security area for cost realism purposes. Accordingly, by the agency’s own calculations, ITT will need to use [deleted] non-incumbent employees to meet the security function alone, which is [deleted] percent of the [deleted] FTEs the agency considered necessary for ITT to perform adequately.

breakdown sheets provided with the RFP), it was not possible to determine whether ITT had proposed costs for each element of the requirement. ID, exh. 2B, at 10-11. The SSA disagreed with this conclusion, finding that, although the data were not presented in the format provided in the RFP, the firm's proposal was nonetheless complete. ID, exh. 7 at 5. However, the SSA made no attempt, either in her source selection decision document, or elsewhere in the record, to explain the basis for her disagreement with the CET (she has not, for example, pointed to the areas of ITT's proposal containing this information or shown that the information included in the ITT proposal could be used to derive the cost elements missing from the CET's analysis.⁵) Under the circumstances, we cannot find that the SSA was reasonable in her rejection of the CET's concern.

In sum, we find that the SSA's disagreement with the TET and CET evaluation conclusions relating to ITT is not explained in or supported by the record; it therefore was not reasonable.

The DynCorp Proposal

The record shows that the SSA found a weakness with the DynCorp proposal for failing to provide information relating to proposed subcontractors. In this respect, she found:

The only weakness noted in the technical proposal was the identification of any subcontractors. The solicitation evaluation criteria states "Subcontractor's Experience (an element): In accordance with the request for information pertaining to the offeror's experience (see the element described immediately above), the offeror should provide similar experience information for identified subcontractors anticipated to perform more than five percent of the work on-site." The offeror states their corporate policy for managing, and selecting subcontractors and how they are planning on using subcontractors for this project. They do not provide any information on the experience of these proposed subcontractors nor state if they will perform more than five percent of the work on-site. The technical evaluators rated this element as satisfactory with a met in each of the items being rated. Two of the items which were rated met, I feel should have been failed. These items are "(b) the precise services and functions to be performed by each proposed subcontractor: and (c)

⁵ We note in this regard that the record includes a spreadsheet prepared by the CET that displays each offeror's cost information for every subelement of cost associated with each functional area of performance. The spreadsheet contains only a gross dollar figure for ITT for each functional area, without any information relating to the subelements of the functional areas. SAR, exh. 6.

identification of subcontractors by name to the maximum extent possible.” In some areas of this project the offeror indicates he will be using subcontractors; however, he fails to provide the information requested. The third element rated was “Key Management and Personnel Positions”. The first sub-element asks for qualifications of subcontractor clearly identified as such. The technical evaluators stated this was not applicable for the reason that this offeror did not identify the subcontractors that it intends to use. This item should have been rated failed. Again, the offeror indicates he will be using subcontractors; however, he fails to provide the information requested.

ID, exh. 7 at 3.

DynCorp takes issue with the SSA’s conclusion, maintaining that it did not propose any subcontractors, and therefore was not required to provide any information. DynCorp adds that, to the extent it may use subcontractors in the course of performance, it would be for minor, contingency-type requirements (such as architectural and engineering requirements that may arise, minor construction and surge capacity requirements) which cannot be anticipated in advance, and which would be below the 5 percent threshold in the RFP; DynCorp interpreted that threshold to mean that subcontractor information would be required only where an individual subcontractor would exceed the 5 percent threshold. DynCorp’s proposal provides: “No DynCorp subcontractor will meet or exceed the 5 % threshold for submission of contract data.” DynCorp Proposal at 164. In preparing its proposal, DynCorp thus interpreted the requirement as it now states that it did.

The agency, on the other hand, takes the position that the RFP required submission of subcontractor experience information where a firm’s subcontractors, either individually or collectively, were to perform more than 5 percent of the requirement. The agency concludes that the SSA reasonably downgraded DynCorp for failing to provide subcontractor information.

We think that DynCorp’s interpretation is reasonable. The information to be provided was for each subcontractor and, accordingly, we think it was reasonable for offerors to assume that the provision was intended to apply for each subcontractor (as opposed to all combined). If we assume that the agency’s view is also reasonable, this indicates a latent ambiguity in the RFP with respect to the 5 percent threshold. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. Moreover, a party’s particular interpretation need not be the most reasonable to support a finding of ambiguity; rather, a party need only show that its reading of the solicitation provisions is reasonable and susceptible of the understanding that it reached. Aerospace Design & Fabrication, Inc., B-278896.2, et al., May 4, 1998, 98-1 CPD ¶ 139 at 13.

Given this conclusion, we need not decide whether the SSA reasonably downgraded DynCorp on this basis; where there is a latent ambiguity, both parties' interpretation of the provision may be reasonable. Under these circumstances, the appropriate course of action is to clarify the requirement and afford offerors an opportunity to submit proposals based on the clarified requirement. Allied Signal, Inc; Elec. Sys., B-275032, B-275032.2, Jan. 17, 1997, 97-1 CPD ¶ 136 at 11.

As for whether the SSA reasonably downgraded DynCorp's proposal under the other evaluation subelements, we find that DynCorp's proposal is unclear regarding the role of subcontractors. On the one hand, DynCorp's proposal seems to provide that the firm will perform the entire requirement by itself. DynCorp Proposal at 15. At the same time, however, DynCorp's proposal also states that it will use subcontractors whenever cost savings will result, DynCorp Proposal at 55, and goes on to enumerate various functional areas where the firm states it is considering subcontracting. DynCorp Proposal at 56. Although, strictly speaking, DynCorp thus did not "propose" any subcontractors, nonetheless the firm appears to have reserved the right to subcontract where it will be advantageous to do so. Accordingly, the SSA may have had a legitimate concern over the apparent possibility that DynCorp would employ subcontractors at a later time.⁶

RISK RATING

DynCorp also asserts that the SSA improperly assigned a high risk rating to its proposal based on low proposed hourly rates for some of its employees. In this regard, the source selection decision document states:

The overall estimated price is reasonable; however, the staffing appears to[o] low in some functional areas which do not make this proposal realistic. Also, the low labor rates indicate the estimated price as unrealistic. The cost growth due to actual rates for qualified staffing and compliance with local labor laws could be extremely high and presents a high performance risk with the pricing proposal.

ID, exh. 7, at 3-4. While DynCorp disputes that its rates were low, it maintains that the cost associated with raising the allegedly low labor rates to rates deemed reasonable by the agency would, in any event, be smaller than the difference between its and ITT's costs. DynCorp concludes that its evaluated cost would have been lower than ITT's, and since its technical proposal would be at least equal to

⁶ Our conclusion respecting DynCorp's proposed key and supervisory personnel is the same, that is, although DynCorp proposed to use DynCorp personnel to fill the enumerated key and supervisory personnel positions, it also states in its proposal that "[s]ome supervisors and workers will be hired, paid and administered by the subcontractor" DynCorp Proposal at 58.

ITT's, it would be entitled to award. Alternatively, DynCorp asserts that it was unreasonable for the agency to assign a high performance risk to its proposal because of potential cost growth while not assigning a similar rating to the ITT proposal, which the agency also found was understated. According to DynCorp, if the agency had properly accounted for its allegedly low hourly rates in its cost realism evaluation, as well as its allegedly low staffing, it would have found that the DynCorp and ITT proposals were understated by similar amounts.

While agencies are not required to conduct in-depth cost analyses to verify each and every proposed cost element in conducting a cost realism evaluation, ManTech Env'tl. Tech., Inc., B-271002 et al., June 3, 1996, 96-1 CPD ¶ 272 at 8, agencies may not engage in disparate treatment when evaluating proposals for the award of a cost reimbursement type contract. United Int'l Eng'g, Inc. et al., B-245448.3 et al., Jan 29, 1992, 92-1 CPD ¶ 122 at 13.

Here, the record shows that, on the one hand, the agency quantified its concerns relating to the offerors' low staffing by making upward adjustments in their cost proposals, but did not assign risk ratings based on this potential cost growth. In the area of DynCorp's low proposed labor rates, on the other hand, the agency did not quantify its concern relating to potential cost growth by increasing DynCorp's evaluated cost, but instead assigned a risk rating based on the potential for cost growth—precisely the concern associated with the offerors' low proposed staffing. Indeed, unduly low labor rates would appear to be a particularly appropriate circumstance for a quantified cost realism adjustment (especially where, as here, the agency has already prepared composite labor rates that it considers realistic); it appears the only reason one was not performed on DynCorp's labor rates was a lack of time. First AR, Legal Memorandum at 15-16. The result, however, was unreasonable. The agency compared DynCorp's performance risk (due to potential cost growth) to ITT's quantified potential cost growth (with no associated performance risk). As a result of this disparate treatment, the agency could not reasonably determine which offeror's cost-driven performance risk was higher, or alternatively, which offeror's potential cost growth was greater.

Prejudice to the protester is an essential element of a viable protest, since our Office will not sustain a protest unless the protester demonstrates a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Stastistica, Inc. v. Christopher, 102 F.3d. 1577, 1581 (Fed. Cir 1996). Here, the dollar impact of the cost growth associated with DynCorp's low labor rates is not clear from the record, since the agency never performed the analysis because of alleged time constraints. However, there is nothing in the record that establishes that DynCorp's cost growth based on an adjustment to its allegedly low labor rates would be substantially greater than the cost growth associated with the ITT proposal (based on DynCorp's own calculations, its cost growth would be lower than ITT's—[deleted] million for

DynCorp and [deleted] million for ITT⁷). With these cost adjustments, DynCorp's evaluated cost would remain lower than ITT's, which suggests that DynCorp could have been selected for award. We conclude that the agency's disparate treatment of the offerors was prejudicial.

RECOMMENDATION

In light of the foregoing, we sustain DynCorp's protest. We recommend that the agency amend the RFP to clarify its subcontractor data requirements and obtain revised proposals. The agency should evaluate those proposals consistent with the above discussion and make a new source selection decision. (Should the agency engage in discussions during this resolicitation, we recommend that it address at least the subcontracting issue (for DynCorp) and the cost data issue (for ITT).) If the agency concludes that a firm other than ITT is properly in line for award, we recommend that the agency make award to that other firm and terminate ITT's contract for the convenience of the government. We also recommend that DynCorp be reimbursed the costs associated with filing and pursuing its bid protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8 (d)(1) (2002). DynCorp should submit its certified claim, detailing the time spent and the costs incurred directly to the agency within 60 days of receiving our decision.

4 C.F.R. § 21.8 (f)(1).

The protest is sustained.

Anthony H. Gamboa
General Counsel

⁷Specifically, DynCorp maintains that if the agency had adjusted its allegedly low proposed rates upward to rates deemed reasonable by the agency, it would have added only an additional [deleted] to its evaluated cost. DynCorp Supplemental Comments, Apr. 5, 2002, exh. 1. If this amount were added to the DynCorp cost proposal, it would result in a total upward adjustment of [deleted] for evaluation purposes, which would mean that DynCorp's total evaluated cost would remain lower than ITT's.